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IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 3193 OF 2007

Ankush Popat Gaikwad .. Applicant

versus

State of Maharashtra .. Respondent

...

Smt.Revati Mohite Dere for the applicant.

Mrs.M.M. Deshmukh, APP for the State.

CORAM : D.G.KARNIK, J

DATED : 23rd November 2007

P.C.:

1. Heard learned counsel for the applicant and learned APP for the State.

2. The applicant has been arrested in connection with an offence registered under section 302 r/w section 34 of the IPC and section 4(21) of the Indian Arms Act, section 137, 135 of the Bombay Police Act. Charge-sheet has also been filed against the applicant in the Sessions Court. The case of the prosecution in short is that the applicant along with two of his accomplices gave a dash by their Indica car to the deceased who was riding a motorcycle.

Thereafter, they lifted the deceased, put him in the car, assaulted him with sword and knife, and committed his murder. Smt.Revati Mohite Dere, learned counsel for the applicant submitted that the two other accomplices have already been enlarged on bail and therefore the applicant deserves to be granted bail on parity. She also submitted the the evidence is insufficient to connect the applicant to the crime and therefore also the applicant must be released on bail.

3. The applicant had made an application in Sessions Court for bail. By a reasoned order dated 6th July 2007, the application has been rejected by the learned Sessions Judge.

4. The learned APP invited my attention to the statement of eye witness Shailesh Sharma. He has specifically names Ankush Gaikwad and referred to his two accomplices. However, the two accomplices have not been specifically named by him. In the circumstances, the case of the applicant cannot be equated with the two accomplices who are not named specifically by the eye witness. The present applicant has been named by name in his statement by the eye witness Shailesh Sharma and therefore case of the present applicant stands on different footing than the case of the other two accused.

5. Statement of one more witness Harsha Shinde has also been recorded by the Magistrate under section 164 of the Code of Criminal Procedure. He has also specifically named Ankush Gaikwad in the statement. Thus there is a prima facie evidence about the complicity of the accused in the crime.

6. Offence is of serious nature and which is punishable with death or Life Imprisonment. There is prima facie evidence connecting the applicant to the crime. In the circumstances, I do not think this is a fit case for grant of bail. Application is accordingly rejected.

7. Xerox copy of the statement of Mr.Shinde which was sent to this court by the magistrate in sealed cover be sealed again and kept in the sealed cover.

8. It is clarified that all observations made herein are only prima facie for the purpose of consideration of the bail application and learned Sessions Judge shall not in any way be influenced by them while considering the evidence at the stage of trial.

. Application is disposed of.

(D.G.KARNIK, J)